

Service Date: November 17, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF WWC HOLDING CO.,)	UTILITY DIVISION
Application for Designation as an Eligible)	
Telecommunications Carrier in Montana)	DOCKET NO. D2003.1.14
Areas Served by Qwest Corporation)	ORDER NO. 6492c

PROTECTIVE ORDER

WWC Holding Co. is now a wholly-owned subsidiary of Alltel Communications, Inc., and will be referred to as Alltel in this order.

On September 15, 2005, Alltel moved for a protective order to govern access to information to be filed in quarterly reports to the Montana Public Service Commission (PSC). Alltel requests a term protective order, which is a protective order effective for a period of time, usually applicable to required periodic filings rather than to a particular case. *See, generally, ARM 38.2.5004.* The Montana Telecommunications Association (MTA) has objected to Alltel's motion for protective order. Alltel has replied.

Alltel's motion is proper in form. It includes the elements required in a motion for protective order before the PSC. Alltel states that it has done a thorough legal and factual examination and has determined the specific items or categories of like items identified are trade secrets or otherwise legally protectible (*e.g.*, privacy, other). *ARM 38.2.5007(2).* Alltel states that it has considered that the PSC is a public agency and that there is a presumption of access to documents and information in the PSC's possession. *ARM 38.2.5007(4)(b)(i).* Alltel states that it understands it has the burden of demonstrating that the identified items are confidential information and that it must, within this motion, establish a *prima facie* showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. *ARM 38.2.5007(3).* Alltel names a contact person regarding the motion and regarding the items to be protected. *ARM 38.2.5007(3)(a).* Alltel has included what it believes is a complete and specific non-confidential identification of the items or categories of items for which it seeks protection. *ARM*

38.2.5007(3)(b). For each item or category of like items Alltel has supplied what it believes is a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to facts. *ARM*

38.2.5007(3)(c). Alltel has included an affidavit suggested by Alltel to support the facts, to be by a person qualified on the subject matter, and supportive of the claim of confidentiality for the identified information. *ARM* 38.2.5007(3)(c). Alltel believes it has explained, in detail, for each item or category of like items, including thorough facts and legal analysis as it relates in general and in specific, proper application of the element of trade secret (or privacy or other). *ARM* 38.2.5007(3)(d). Alltel's motion has been noticed in accordance with ARM 38.2.5007(8).

Alltel identifies three categories of information for which it requests a protective order: (1) customer complaint reports; (2) network signal coverage and improvement reports; and (3) Universal Service Administrative Company (USAC) filings. Alltel argues all categories are trade secret. Alltel argues that customer complaint reports include information that is protectible as individual privacy as well.

Pursuant to PSC rule ARM38.2.5007(4)(a) the elements of individual privacy are: (a) the provider has made a reasonable effort to contact the individual to ascertain whether the individual waives the right to privacy for the information at issue; (b) the individual with a potential privacy interest has an actual, subjective expectation of privacy in the information at issue; (c) society recognizes such expectation of privacy as reasonable; and (d) the demand of individual privacy clearly exceeds the merits of public disclosure. Alltel is asserting privacy for its customers. Individual privacy can be asserted by an entity for an individual. *See, e.g., Belth v. Bennett*, 227 Mont. 341, 345 (1987). Alltel has not contacted its customers to ascertain whether each customer waives the right of privacy and argues the requirement is unreasonable (re-open complaints) and unduly burdensome (number of complaints). Alltel argues its customers have an expectation of privacy regarding identifying information and complaint information, as Alltel's service contracts require Alltel to maintain confidentiality. Alltel argues society recognizes the customers' expectation of privacy as reasonable because wireless communication has historically

been private, wireless directory listings are opt-in services, and consumer groups have opposed national directories. Alltel argues its customers' rights to privacy outweigh the merits of public disclosure. Alltel suggests the PSC's need for the information and the customers' right of privacy can be balanced by issuance of a protective order. MTA suggests customer-identity and personal information could be redacted from customer complaints to protect privacy.

Pursuant to PSC rule ARM 38.2.5007(4)(b) the elements of trade secret are: (a) the material is information; (b) the information is in fact secret; (c) the information is subject to efforts reasonable under the circumstances to maintain its secrecy; (d) the information is not readily ascertainable by proper means; and (e) the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. Regarding customer complaints as trade secret, Alltel argues the complaints are information, the information is secret, the secrecy is maintained, and the complaints are not readily ascertainable by others through any proper means. Alltel also argues a competitive advantage could be gained by competitors in being able to know which customers might be targeted to switch carriers. Regarding network signal coverage and improvement reports, Alltel argues the information is secret, maintained as secret, and not readily available to others by proper means. Alltel also argues competitors can identify weak points and target growth expansion areas with this information, all detrimental to Alltel's independent economic value in the information. Regarding USAC filings, Alltel argues the information pertains to line counts and USAC, although receiving the information from Alltel, does not publish the details of line counts. Alltel argues the information is secret, maintained as secret, and not readily available to others by proper means. Alltel argues competitors could learn market penetration and market presence information, to the detriment of Alltel's independent economic value in the information.

MTA's arguments against protection of the categories of information identified by Alltel appear predominantly public policy arguments. MTA's public policy arguments might make sense from a certain perspective, but the law of protective orders, which essentially is the prevailing public policy, allows protection of information if the provider demonstrates certain conditions

exist. Alltel has made a sufficient case for protection in regard to the categories of information identified.

Alltel has made the required demonstration that the elements of privacy exist for customer complaints and the elements of trade secret exist for customer complaints, identified network information, and USAC filings. The PSC grants Alltel's request for protection of the identified information and hereby orders that information submitted in accordance with this order be treated as "confidential information" under the terms of this order and PSC protective order rules, ARM 38.2.5001 through 38.2.5030. However, the PSC determines that customer complaint reports, if complete, will include customer information that is private (*e.g.*, address) and trade secret (*e.g.*, location). Therefore, Alltel must provide exact copies of complaint reports, which will be protected on the basis of individual privacy and trade secret and redacted copies of complaint reports, eliminating all customer-specific information, which will not be protected.

Done and dated this 31st day of October, 2005, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No. D2003.1.14, Order No. 6492c
Order Action Date: October 31, 2005

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented